

Josh Mackey

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1	promote IMG mainstream websites?	1 Q. Who is responsible for maintaining IMG's websites?
2	A. No.	2 MR. APGOOD: Object to the form of the
3	Q. Does IMG own commercial websites that sell	3 question, objection, calls for speculation.
4	access to sexually-oriented pictures?	4 MR. FREEMAN: Join.
09:22:29 5	A. Does -- I'm sorry? Rephrase.	5 A. Both myself and Seth Schermerhorn.
6	Q. Does IMG own websites that sell access to	6 (Recess.)
7	sexually-oriented pictures?	7 Q. Who at IMG decides whether a new website
8	A. Yes.	8 should be added?
9	MR. APGOOD: Object to the form of the	9 A. Seth Schermerhorn.
09:22:42 10	question.	11 Q. And who decides whether an existing website
11	MR. FREEMAN: Join.	12 should be taken down?
12	Q. Does IMG operate websites to sell access to	13 MR. FREEMAN: Object to the form of the
13	sexually-oriented pictures?	14 question.
14	MR. APGOOD: Object to the form of the	15 A. Seth Schermerhorn.
09:22:52 15	question.	16 Q. To your knowledge, does IMG own the pictures
16	MR. FREEMAN: Object to form.	17 posted on its websites?
17	A. Yes.	18 MR. FREEMAN: Object to the form of the
18	Q. What areas of business is IMG involved in	19 question.
19	other than adult entertainment?	20 A. No.
09:23:03 20	MR. APGOOD: Objection, calls for	21 Q. To your knowledge, does IMG own some of the
21	speculation.	22 pictures posted on its websites?
22	A. Mainstream marketing.	23 A. We own rights to pictures on websites.
23	Q. What kind of products?	24 Q. Are you currently employed by IMG?
24	A. There's car parts, there's also Pocket Bikes	25 A. Yes.
09:23:28 25	and stock photography.	
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1	Q. Anything else?	1 Q. And how long have you been employed by IMG?
2	A. And then just general case-by-case site	2 A. Three years and ten months.
3	design for miscellaneous companies.	3 Q. And what positions have you held at IMG?
4	Q. Does IMG do site design for other adult	4 A. Graphic designer, photographer.
09:23:53 5	entertainment companies?	5 Q. What position do you currently hold at IMG?
6	A. No.	6 A. Graphic designer.
7	MR. APGOOD: Objection, calls for	7 Q. When were you a photographer at IMG?
8	speculation.	8 A. Just whenever we are in need of pictures,
9	Q. Who owns IMG?	9 whether it be stock photos or photos specific to
09:24:01 10	A. Seth Schermerhorn.	10 product for one of our mainstream websites.
11	Q. What is Mr. Schermerhorn's position in the	11 Q. When you say stock photos, what do you mean?
12	company?	12 A. Buildings, trees, rocks.
13	A. President, CEO, owner.	13 Q. When is the last time you were a photographer
14	Q. Who would you say is responsible for the	14 for IMG?
09:24:17 15	day-to-day running of IMG?	15 A. It would probably have to be about a year ago
16	MR. FREEMAN: Object to the extent it	16 when we were making the Pocket Bike website.
17	calls for speculation.	17 Q. And how many graphic designers does IMG have?
18	A. Seth Schermerhorn.	18 A. Just one. Myself.
19	MR. APGOOD: Join.	19 Q. Were you the first graphic designer at IMG?
09:24:26 20	Q. Who is responsible for creating IMG's	20 A. Yes.
21	websites?	21 Q. What are your responsibilities as a graphic
22	MR. APGOOD: Objection, calls for	22 designer?
23	speculation.	23 A. I create websites, banner ads,
24	MR. FREEMAN: Join.	24 advertisements, fliers.
09:24:34 25	A. Both myself and Seth Schermerhorn.	25 Q. When you say you create websites, what kind

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1	for content they are looking for.	1 Q. And when did you first become aware of the
2	Q. And you testified that as a graphic designer	2 CAN-SPAM Act?
3	you create advertisements for IMG. How do	3 A. Roughly two years ago.
4	advertisements differ from banner ads?	4 Q. How were you made aware of the CAN-SPAM Act?
09:36:46 5	A. Banner ads are a specific size.	5 A. Online through a website that posts news in
6	Advertisements could be full pages or multiple pages.	6 regards to Internet parking.
7	Q. And when you use the term advertisements,	7 Q. Were you given any training on the CAN-SPAM
8	does that mean print advertisements, or --	8 Act at IMG?
9	A. Yes, it could.	9 A. Yes.
09:37:04 10	Q. Does it mean electronic advertisements, as	10 Q. Can you describe that training?
11	well?	11 A. If I were to create any images or HTML code,
12	A. Yes.	12 that if it was going to be used, it must -- let me
13	Q. And you testified that as a graphic designer	13 rephrase that.
14	you create fliers for IMG?	14 I would create two different versions of
09:37:18 15	A. I have created one flier, yes.	15 an advertisement: one would be CAN-SPAM approved and
16	Q. What was that flier?	16 one would not.
17	A. SoulCash.com.	17 Q. And when you use the term image, can you --
18	Q. And what was the SoulCash.com flier used for?	18 A. Picture.
19	A. Inside affiliate webmaster paychecks we	19 Q. When you create two different versions of an
09:37:36 20	insert the flier stating to advertise, advertise the	20 image, can you explain how one is CAN-SPAM compliant
21	other content that is in SoulCash.com.	21 and the other would differ?
22	Q. Who do you report to at IMG?	22 MR. APGOOD: Objection to the extent it
23	A. Seth Schermerhorn.	23 misstates the witness's prior answer as a predicate
24	Q. Do you prepare any regular reports in your	24 basis for the question.
09:38:04 25	position at IMG?	09:41:02 25 MR. FREEMAN: Join.
	Page 23	Page 25
1	MR. FREEMAN: Object to the form of the	1 A. The CAN-SPAM one would have no explicit
2	question.	2 images or text.
3	A. No.	3 Q. Who told you to begin to create two different
4	Q. Do you supervise any employees of IMG?	4 versions of images?
09:38:15 5	A. No.	09:41:22 5 A. Seth Schermerhorn.
6	Q. Where were you employed before IMG?	6 Q. When did he tell you to do this?
7	A. Trend West Resorts.	7 A. At the time that we learned about CAN-SPAM.
8	Q. Did you work for any adult entertainment	8 Q. Were you instructed to create two different
9	companies before IMG?	9 versions of all images that you created?
09:38:36 10	A. I did not.	09:41:38 10 MR. FREEMAN: Object to the form of the
11	Q. Are you familiar with the CAN-SPAM Act?	11 question, and object to the extent it mischaracterizes
12	A. Yes.	12 prior testimony.
13	Q. What is the basis for your knowledge	13 A. No. Just whatever advertisement I was
14	regarding the CAN-SPAM Act?	14 working on.
09:38:59 15	A. Can not contain any explicit pictures or	09:41:48 15 Q. The advertisements that you create are
16	text.	16 available for affiliates to use to promote IMG's
17	Q. When you say it, what are you referring to?	17 websites. Is that correct?
18	A. It?	18 A. Yes.
19	MR. FREEMAN: I'm going to object --	19 Q. And how do affiliates get access to these
09:39:16 20	MS. HASH: Can you read back his answer.	20 advertisements?
21	(Reporter read back as requested the	09:42:17 21 MR. FREEMAN: Object to the form of the
22	last answer.)	22 question to the extent it calls for speculation.
23	Q. What can not contain any explicit pictures or	23 If you know, you can answer.
24	text?	24 A. They become a member of SoulCash.com's
09:39:20 25	A. Spam is email, so email.	25 webmaster-affiliate program, and the materials are, if

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<p style="text-align: right;">Page 26</p> <p>1 we so choose, posted on the website for them to 2 down-load or link to.</p> <p>3 Q. And so on the website, how are the 4 CAN-SPAM-compliant advertisements and the other 09:42:50 5 advertisements differentiated?</p> <p>6 MR. FREEMAN: Object to the form of the 7 question. By the term the website, are you referring 8 to an affiliate's website or the SoulCash.com website?</p> <p>9 Q. On the SoulCash.com website, how are the two 09:43:04 10 different versions of advertisements differentiated?</p> <p>11 A. The CAN-SPAM, the actual advertisements, it 12 depends on the advertisement in question, or, I guess, 13 on an advertisement-to-advertisement basis, because 14 not all advertisements were put on SoulCash.com. Many 09:43:30 15 of them were kept off and were sent to webmasters on a 16 one-by-one basis.</p> <p>17 Q. Okay. And the advertisements on the 18 SoulCash.com website, how are the two different 19 versions differentiated?</p> <p>20 MR. FREEMAN: Object to the extent it 21 calls for speculation, and object to the extent it 22 mischaracterizes his prior testimony.</p> <p>23 MR. APGOOD: I will join and object to the 24 form of the question, as well.</p> <p>25 A. If one of the advertisements differed from</p>	<p style="text-align: right;">Page 28</p> <p>1 versions after January 1st 2004 to webmasters? 2 MR. APGOOD: Calls for speculation. 3 MR. FREEMAN: Join. 4 A. Not that I can recall. 09:45:12 5 Q. Have you been an affiliate of IMG at any 6 point? 7 A. Not of IMG, no. 8 Q. Have you been an affiliate of any other adult 9 entertainment company at any point? 10 A. No. 11 Q. Are you aware of any IMG employee who has 12 been an affiliate of IMG at any point? 13 A. No. 14 Q. What does the term spam mean to you? 15 A. Unsolicited email. 16 Q. And the term spammer? 17 A. Someone that sends unsolicited email. 18 Q. And what do you base this definition on? 19 A. Past knowledge of being an Internet surfer. 09:45:44 20 Q. If someone sends bulk commercial email that 21 was opted into, is that spam to you? 22 A. No. 23 MR. APGOOD: Objection. 24 MR. FREEMAN: Object to the form of the 09:45:56 25 question to the extent it calls for speculation.</p>
<p style="text-align: right;">Page 27</p> <p>1 the other, there was a notice saying that this is 2 CAN-SPAM approved.</p> <p>3 Q. And were there some advertisements that did 4 not have two versions?</p> <p>09:44:15 5 A. Yes.</p> <p>6 Q. And you said that some advertisements were 7 sent directly to affiliates. Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And were two different versions of 09:44:28 10 advertisements sent to affiliates?</p> <p>11 A. No.</p> <p>12 MR. FREEMAN: Object to the form of the 13 question.</p> <p>14 MR. APGOOD: Join.</p> <p>09:44:34 15 Q. When advertisements were sent to affiliates, 16 how did IMG know whether to send the CAN-SPAM- 17 compliant version or the other version?</p> <p>18 MR. FREEMAN: Object to the form of the 19 question.</p> <p>09:44:47 20 A. We would only send the CAN-SPAM-compliant 21 version to a webmaster.</p> <p>22 MR. APGOOD: I will join and object to the 23 form of the question to the extent it calls for 24 speculation.</p> <p>09:44:59 25 Q. Did IMG ever send nonCAN-SPAM compliant</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. APGOOD: Join.</p> <p>2 Q. What is IMG's policy regarding spam?</p> <p>3 A. We do not tolerate it. We have a term of 4 service on our website for webmasters' affiliates to 09:46:48 5 read before they join. It's section 2, paragraph 3.</p> <p>6 Q. Is IMG's policy regarding spam written 7 anywhere else, to your knowledge?</p> <p>8 A. Just in our terms of service, which is 9 usually linkable through all websites.</p> <p>09:47:08 10 Q. Has IMG's policy regarding spam as written in 11 the terms of service for affiliates changed since 12 January 1st, 2004?</p> <p>13 MR. FREEMAN: Object to the extent it 14 calls for speculation.</p> <p>09:47:23 15 MR. APGOOD: Join.</p> <p>16 A. No. We've never tolerated spam.</p> <p>17 Q. And when you say never, has the provision 18 against spam been in terms of service for affiliates 19 since IMG began?</p> <p>09:47:40 20 A. Yes.</p> <p>21 MR. APGOOD: Objection, calls for 22 speculation.</p> <p>23 MR. FREEMAN: Join.</p> <p>24 Q. To your knowledge, did IMG do anything to 09:47:50 25 notify its affiliates of the CAN-SPAM Act?</p>

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1	A. Yes.	1	into separate categories depending on how many joins
2	Q. What did IMG do?	2	they send to our websites. The more joins, the better
3	A. We sent out a newsletter via email to our	3	their tier level they are.
4	webmasters.	4	Q. What are the range of tier levels?
09:48:07 5	Q. What did that newsletter say?	09:51:12 5	A. One to three, if I can recall.
6	MR. FREEMAN: Object to the form of the	6	Q. So, tier 1, what would an affiliate have to
7	question to the extent it calls for speculation.	7	be to be in tier 1?
8	A. I can not recall.	8	MR. FREEMAN: Object to form and object to
9	MR. APGOOD: Join.	9	the extent it calls for a legal conclusion.
09:48:14 10	Q. And do you know when this newsletter went	09:51:26 10	If you know, you can answer.
11	out?	11	MR. APGOOD: Join.
12	A. I'd have to estimate around the same time	12	A. That's the bottom line. They wouldn't have
13	that the CAN-SPAM Act was approved.	13	to do anything if they didn't want to.
14	Q. It's your understanding that a newsletter	14	Q. Okay. And how many joins would an affiliate
09:48:34 15	went out to IMG's affiliates via email notifying them	09:51:39 15	have to bring to IMG to be a tier 3?
16	of the CAN-SPAM Act?	16	A. All tiers are pretty much on a custom basis.
17	A. Yes.	17	If we feel that an affiliate is representing our
18	Q. Do you know anything else about this	18	affiliate program, we will move him up on a one-by-one
19	newsletter?	19	basis, so there wasn't an automatic program that
09:48:45 20	A. No.	09:51:58 20	automatically bumps him up.
21	Q. Are affiliates the same thing as webmasters?	21	Q. What other benefits does an affiliate get
22	A. Yes.	22	from being a tier 3?
23	Q. Does IMG pay affiliates to bring potential	23	A. Either a better payout ratio or a higher --
24	new members to IMG's website?	24	we have two different kinds. We have red share, which
09:49:25 25	A. Yes.	09:52:21 25	is a percentage of the sale, or a pay per join, they
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1	Q. Do you have any contact with IMG's	1	would get a higher pay-per-join fee.
2	affiliates?	2	Q. Have you ever done custom work for an
3	A. No.	3	affiliate to use in an email?
4	Q. Have you ever had any contact with IMG's	4	A. No.
09:49:36 5	affiliates?	09:52:41 5	Q. To your knowledge, does IMG allow email
6	A. On a one-to-one basis. For example, if a	6	campaigns by affiliates that are opted into?
7	webmaster needed a custom-sized banner for their	7	MR. FREEMAN: Object to the extent the
8	website, I would be in direct contact with them.	8	question is asked and answered.
9	Q. So, you have done custom work for IMG's	9	MR. APGOOD: Join.
09:50:00 10	affiliates?	09:52:55 10	A. If it's opted in, yes.
11	A. Yes.	11	Q. Yes, IMG does allow the campaign?
12	Q. What other kind of custom work have you done?	12	A. As far as I know, opted in emails, yes.
13	A. Nothing.	13	Q. Who at IMG runs the SoulCash.com affiliate
14	Q. In the instances when you made a custom-sized	14	program?
09:50:17 15	banner for an affiliate, how did they contact you?	09:53:18 15	A. Seth Schermerhorn.
16	A. Usually via email or ICQ, which is an instant	16	MR. FREEMAN: Object to the form of the
17	messaging program.	17	question.
18	Q. Is custom work something that IMG does for	18	MR. APGOOD: Join.
19	all of its affiliates?	19	Q. Who at IMG has direct contact with IMG's
09:50:34 20	A. No.	20	affiliates?
21	Q. How do you know which affiliates to do custom	21	MR. FREEMAN: Object to the extent it
22	work for?	22	calls for speculation.
23	A. They have a certain tier level.	23	MR. APGOOD: Join.
24	Q. Can you explain this tier-level system?	24	A. Seth Schermerhorn.
09:50:53 25	A. Tier level is basically we'll lump webmasters	09:53:33 25	Q. Anyone else?

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1	MR. FREEMAN: Same objection.	1 MR. APGOOD: Join.
2	MR. APGOOD: Join.	2 A. Because they are selling -- they're using our
3	A. Adam Welch used to have direct contact. He's	3 content to sell joins to our websites.
4	no longer a member of the company now.	4 Q. And does IMG provide services to affiliates
09:53:46 5	Q. How does someone become an affiliate of IMG?	5 to help them bring joins to IMG's website?
6	A. By going to SoulCash.com and signing up.	6 MR. FREEMAN: Object to the extent it
7	Q. And are you familiar with the sign-up	7 calls for speculation.
8	process?	8 A. Can you explain services?
9	A. Yes.	9 MR. APGOOD: Join.
09:54:04 10	Q. What information does a potential affiliate	10 Q. Yes. What does IMG do to help its affiliates
11	have to provide to IMG as a part of the sign-up	11 promote IMG's website?
12	process?	12 A. Basically everything that's in our content
13	A. Full name, address, tax payer ID, or their	13 page. Like I have mentioned before, advertisements,
14	social, and they must agree to our terms of service,	14 banners. If they need help on where to put them, we
09:54:20 15	and telephone contact information and email.	15 can suggest where to put them, but it's only a
16	Q. And is an affiliate automatically approved if	16 suggestion.
17	they submit this information?	17 Q. If an affiliate has a question, can they
18	A. Yes.	18 contact IMG's employees?
19	Q. Does IMG do anything to verify the physical	19 A. Yes.
09:54:41 20	address provided by a potential affiliate?	20 Q. And how would an affiliate do that?
21	MR. FREEMAN: Object to form, object to	21 A. Either website telephone number or email or
22	the extent it calls for speculation.	22 instant message.
23	A. No.	23 Q. And who at IMG would a webmaster contact with
24	MR. APGOOD: Join.	24 questions?
09:54:51 25	Q. Did you work on the affiliate sign-up page?	25 A. If it's technical support, it would be
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1	A. No.	1 submitted into our technical support website, and
2	Q. Do you know who did?	2 someone from our support staff, which is Seth
3	A. Seth Schermerhorn.	3 Schermerhorn, would answer it, or if it's email, it
4	Q. If an affiliate is terminated and then goes	4 would go to whoever would email, which is usually Seth
09:55:14 5	through the sign-up process again and submits new	5 Schermerhorn, or Adam Welch at the time, and if it's a
6	information, is there any way for IMG to determine	6 telephone, it would go into our automatic telephone
7	that they have been previously terminated?	7 system, and they would select the person from the
8	MR. FREEMAN: Object to the extent it	8 menu.
9	relies on evidence not yet established, and object to	9 Q. So, you testified previously that CyberHeat
09:55:30 10	the form of the question.	10 provides banner ads, advertisements, fliers to
11	MR. APGOOD: I join, and object to the	11 affiliates. Any other kind of promotional material?
12	extent it calls for speculation.	12 MR. FREEMAN: Objection, CyberHeat?
13	A. I do not know.	13 Q. Sorry. IMG.
14	Q. What does an affiliate do to make money after	14 A. Can you rephrase the question now?
09:55:45 15	they have submitted this application and are approved?	15 Q. Yes. You testified that IMG provides banner
16	MR. APGOOD: Objection, calls for	16 ads, advertisements, banner ads and advertisements to
17	speculation.	17 affiliates to promote IMG's websites. Are there any
18	MR. FREEMAN: And to the extent the	18 other promotional materials that IMG provides to
19	question has been asked and answered.	19 affiliates?
09:55:52 20	A. They'll use the content inside SoulCash.com	20 MR. FREEMAN: Objection to the extent it
21	to display on their own websites or advertisements.	21 calls for speculation.
22	Q. And why would an affiliate do that? What's	22 Answer what you know.
23	the purpose?	23 MR. APGOOD: Join.
24	MR. FREEMAN: Object to the extent it	24 A. No.
09:56:12 25	calls for speculation.	25 Q. And can the banner ads and advertisements

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<p style="text-align: right;">Page 38</p> <p>1 that IMG makes available to affiliates be used in 2 emails by affiliates to promote IMG's websites? 3 MR. APGOOD: Object, calls for 4 speculation. 09:59:16 5 MR. FREEMAN: Join that objection, and 6 object to the form of the question. 7 A. Yes. 8 Q. If IMG does a new promotion to attract 9 affiliates, would you be responsible for designing 10 that new promotion? 11 A. Yes, if it was, if it was something that was 12 assigned to me to do. 13 Q. How does IMG let affiliates know about new 14 promotions? 09:59:52 15 MR. APGOOD: Objection, calls for 16 speculation. 17 MR. FREEMAN: Join. 18 A. It's either posted within SoulCash.com, or it 19 goes out in the webmaster-affiliate newsletter. 10:00:02 20 Q. And how does the webmaster-affiliate 21 newsletter get to affiliates? 22 MR. APGOOD: Objection, calls for 23 speculation. 24 A. Email. 10:00:13 25 Q. Are those newsletters ever sent by postal</p>	<p style="text-align: right;">Page 40</p> <p>1 pretty similar to sales. 2 Q. How does a join and a sale differ? 3 A. There's a ratio -- well, join and sale are 4 the same meaning, I guess, for these websites, but 5 there's a ratio per how many users visit the site, per 6 how many users join. 7 Q. And does IMG pay an affiliate for bringing a 8 visitor to IMG's website? 9 A. No. 10 MR. APGOOD: Objection, calls for 11 speculation. 12 Q. Does IMG pay affiliates for bringing users 13 who join IMG's website? 14 MR. APGOOD: Objection, calls for 15 speculation. 16 A. Yes. 17 MR. FREEMAN: As well as objection, asked 18 and answered. 19 Q. And does IMG provide statistics on how many 20 joins an affiliate has brought to IMG's websites to 21 that affiliate? 22 A. Yes. 23 MR. APGOOD: Objection, calls for 24 speculation. 25 Q. How does IMG provide statistics like this to</p>
<p style="text-align: right;">Page 39</p> <p>1 mail to the physical addresses provided by affiliates? 2 A. No. 3 Q. Does IMG ask affiliates what kind of means 4 they're using to promote IMG's website? 10:00:38 5 MR. FREEMAN: Object to the form of the 6 question, object to the extent it calls for 7 speculation. 8 A. I do not know. 9 MR. APGOOD: Join. 10 Q. Have you ever asked an affiliate what kind of 11 means they're using to promote IMG's website? 12 A. No. 13 Q. Does IMG ever provide lists of email 14 addresses to affiliates? 10:01:03 15 A. No. 16 MR. APGOOD: Objection, calls for 17 speculation. 18 MR. FREEMAN: Join. 19 A. No. 10:01:06 20 Q. Does IMG provide sales statistics to 21 affiliates? 22 MR. APGOOD: Objection, calls for 23 speculation. 24 MR. FREEMAN: Join. 10:01:18 25 A. Sales -- we have join statistics, which are</p>	<p style="text-align: right;">Page 41</p> <p>1 affiliates? 2 MR. APGOOD: Objection, calls for 3 speculation. 4 A. Through the members' area within 5 SoulCash.com. 6 Q. Is there some sort of database that this 7 information is contained in? 8 A. I would think so. I do not know, though. 9 Q. So, you haven't worked on a database like 10 that? 11 A. No. 12 MR. FREEMAN: Objection, form of the 13 question. 14 MR. APGOOD: Join. 10:02:58 15 Q. To your knowledge, what other statistics does 16 IMG provide to affiliates? 17 A. That's all. 18 MR. FREEMAN: Objection, speculation. 19 MR. APGOOD: Join. 10:03:06 20 Q. To your knowledge, does IMG track the amount 21 of usage of its sites by members? 22 MR. FREEMAN: Object to the form of the 23 question. 24 A. Not that I know of. 25 Q. And to your knowledge, does IMG track how</p>

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1	members navigate through IMG's websites?		
2	A. Not that I know of.		
3	Q. To your knowledge, have any affiliates of		
4	IMG's affiliate program promoted IMG's websites		
10:03:57 5	through bulk email messages?		
6	A. Can you rephrase the question, please?		
7	Q. Yes. To your knowledge, do you know of any		
8	IMG affiliates to have promoted IMG websites through		
9	bulk email messages?		
10:04:12 10	A. No, I do not.		
11	MR. FREEMAN: Object to form, also object		
12	to foundation.		
13	MR. APGOOD: Join.		
14	Q. IMG pays affiliates for bringing new members		
10:04:27 15	who join to IMG's websites. Is that correct?		
16	A. Yes.		
17	Q. And how does IMG know which affiliate to pay		
18	when a new member joins IMG's website?		
19	MR. FREEMAN: Object to the extent it		
10:04:44 20	calls for speculation.		
21	MR. APGOOD: Join.		
22	A. When a surfer signs up via the website, they		
23	usually sign up through a webmaster's own link, which		
24	has the user ID embedded into it, so when that user		
10:04:59 25	signs up on a site, that webmaster-affiliate ID is		
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1	embedded into it and it is credited with that sale.		
2	Q. Does each affiliate have a unique user ID?		
3	A. Yeah.		
4	Q. What does that user ID consist of? Is it a		
10:05:18 5	series of numbers?		
6	MR. FREEMAN: Object to the extent it		
7	calls for speculation.		
8	A. It's unique to whatever they want.		
9	Q. And who at IMG is responsible for tracking		
10:05:36 10	this user ID information so IMG knows which affiliate		
11	to pay?		
12	MR. FREEMAN: Object to the form to the		
13	extent it calls for speculation.		
14	MR. APGOOD: Join.		
10:05:49 15	A. Seth Schermerhorn.		
16	Q. Does IMG track what method of advertising an		
17	affiliate uses to direct a new member to IMG's		
18	website?		
19	A. No.		
20	Q. Are you aware of any method whereby IMG could		
21	track what method of advertising an affiliate used to		
22	direct a new member to IMG's website?		
23	MR. FREEMAN: Object to form, calls for		
24	speculation, object to foundation.		
10:06:18 25	MR. APGOOD: Join.		
		12 (Pages 42 to 45)	

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10:09:37 5	MR. FREEMAN: Same objections. A. Reask the question again, then.	1 MR. APGOOD: Join. 2 A. It could be possible, but we haven't done it.
10:09:47 10	Q. How does the process work if a surfer comes to IMG's website and wants to sign up? What do they have to do? MR. FREEMAN: Objection to the extent it calls for speculation.	3 Q. To your knowledge, where in this subscription process does a new member have to pay? 4 A. It's a recurring payment. As soon as they sign up, it will always be recurring unless they cancel.
10:10:18 15	A. If the surfer in question comes to the website, they usually are given a tour, which is a one-to-two-page website, which shows the content that is available inside that website. If that user so chooses, they can join on the join page. Q. And so after the user does the tour and comes to the join page, does the potential new member have to answer any questions on the join page?	5 Q. So, where in the subscription process does the new member enter their payment information? 6 A. On the join page.
10:10:31 20	MR. FREEMAN: Objection to the extent it calls for speculation, foundation.	7 Q. What methods of payment does IMG accept? 8 A. Credit card. 9 Q. Anything else? 10 A. It's a 1-800 number you can call and subscribe through, as well.
10:10:41 25	MR. APGOOD: Join. A. To my knowledge, all they have to do is fill out a user and password info and credit card information. Q. Have you ever worked on the graphics for any of the join pages? A. Yes.	11 Q. To your knowledge, does IMG use any third-party payment processors? 12 A. Yes. 13 Q. What third-party payment processors does IMG use? 14 A. Paycom. 15 Q. Any others? 16 A. No. 17 Q. Are you familiar with the term cookie as it is used in the computer industry?
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10:10:54 5	Q. To your knowledge, do any of the join pages have drop-down menus where the new member has to answer questions? A. No. Q. To your knowledge, has IMG ever considered asking new members as a part of this join process how they got to IMG's website?	1 A. Yes. 2 Q. What is a cookie in computer speak? 3 A. It's a saved-information file on a certain website.
10:11:05 10	MR. FREEMAN: Object to the form of the question. A. No.	4 Q. Does IMG use cookies? 5 MR. FREEMAN: Objection to the extent it calls for speculation.
10:11:18 15	Q. Have you been a part of any discussions at IMG regarding asking new members how they got to IMG's website? A. No.	6 MR. APGOOD: Join. 7 A. On a case-by-case basis for a website, a website basis.
10:11:28 20	Q. Are you aware of any technical impediments to asking potential members how they got to IMG's website? MR. FREEMAN: Objection, speculation, and object to the form of the question.	8 Q. Okay. What does IMG use cookies for? 9 A. Webmaster logins, or user logins. 10 Q. When you say webmaster logins? 11 A. Webmaster-affiliate logins for SoulCash.com.
10:11:45 25	MR. APGOOD: Join. A. Technical impediments. Can you explain? Q. Yes. Do you think it would be possible based on you having worked on these join pages to ask new members how they got to IMG's website? MR. FREEMAN: Same objection.	12 Q. How would IMG use a cookie for webmaster logins? 13 MR. FREEMAN: Objection to the extent it calls for speculation. 14 MR. APGOOD: Join. 15 A. When they try to access our webmaster-affiliate program, when they click login, that information is automatically displayed for them. 16 Their login info, that is. 17 Q. Okay. How does IMG use cookies for user login?

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10:14:40 5	<p>1 A. Same principle. When a user or member of a certain site goes to that site to access the content, when they click login, their information is automatically populated, so they can join without entering in their info.</p> <p>6 Q. Does IMG use cookies for anything else?</p> <p>7 MR. APGOOD: Objection, calls for speculation.</p> <p>9 MR. FREEMAN: Join.</p>	<p>1 Q. What was your answer?</p> <p>2 A. No.</p> <p>3 Q. To your knowledge, since January 1st, 2004 has IMG ever required affiliates to send samples of the email campaigns they are going to be using?</p>
10:14:47 10	<p>10 A. Not that I can recall.</p> <p>11 Q. What terms of subscription does IMG offer to new members?</p> <p>13 A. Terms of subscription?</p> <p>14 Q. Yes.</p>	<p>10:17:09 5 MR. FREEMAN: Object to the form of the question, assumes facts not in evidence, object to the extent it mischaracterizes his prior testimony.</p> <p>10:17:22 10 MR. APGOOD: Object to the extent that it contravenes prior testimony.</p> <p>11 Q. You testified previously that IMG does allow affiliates to use email campaigns if they've been opted into. Is that correct?</p> <p>14 A. Correct.</p>
10:15:09 15	<p>15 A. As far as I know, there are three different kinds: there is trial, 30 day, and full year, I believe.</p> <p>18 Q. Are you aware of any methods IMG uses to monitor their affiliates?</p>	<p>10:17:36 15 Q. Since January 1st, 2004, has IMG ever required affiliates to send samples of these email campaigns to make sure they're in compliance with the CAN-SPAM Act?</p> <p>19 A. No.</p>
10:15:49 20	<p>20 MR. FREEMAN: Objection to the extent it calls for speculation, object to the form of the question.</p> <p>23 MR. APGOOD: Join.</p> <p>24 A. Rephrase the question, please.</p>	<p>10:17:52 20 Q. To your knowledge, since May of 2004 has IMG ever provided affiliates with sample emails that are in compliance with the CAN-SPAM Act and Adult Labeling Rule?</p> <p>24 A. No.</p>
10:15:56 25	<p>25 Q. Do you know of any means whereby IMG monitors</p>	<p>10:18:04 25 MR. FREEMAN: Object to the question to</p>
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10:16:09 5	<p>1 their affiliates' activities?</p> <p>2 MR. FREEMAN: Same objection.</p> <p>3 A. Through the webmaster-affiliate program, through the administration.</p> <p>5 Q. How does IMG monitor affiliates through the webmaster-affiliate program?</p> <p>7 A. I don't know.</p> <p>8 MR. APGOOD: Objection, calls for speculation.</p>	<p>1 the extent it calls for speculation.</p> <p>2 Q. Did IMG have affiliates prior to January 1st, 2004?</p> <p>4 A. Yes.</p> <p>5 Q. Did existing affiliates have to sign an agreement stating that they had read the CAN-SPAM law when it went into effect?</p> <p>8 MR. FREEMAN: Object to the extent it calls for speculation.</p>
10:16:20 10	<p>10 MR. FREEMAN: Join.</p> <p>11 Q. Do you know of any methods whereby IMG monitors affiliates for compliance with the CAN-SPAM Act?</p> <p>14 MR. FREEMAN: Objection to the extent it calls for speculation.</p>	<p>10:18:39 10 A. I don't know. (Discussion off record.)</p> <p>12 Q. Has IMG ever received a complaint from an individual who was the recipient of unsolicited commercial emails?</p>
10:16:38 15	<p>16 MR. APGOOD: Join. Also object to the extent it calls for a legal conclusion.</p> <p>18 MR. FREEMAN: Join.</p> <p>19 A. Rephrase the question, please.</p>	<p>10:39:38 15 MR. FREEMAN: Objection to the extent it calls for speculation.</p> <p>17 MR. APGOOD: Join.</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. So, you have never handled a spam complaint personally?</p>
10:16:45 20	<p>20 Q. Do you know of anything that IMG does to monitor affiliates to see if they're complying with the CAN-SPAM Act?</p> <p>23 A. No.</p> <p>24 MR. APGOOD: Same objection.</p>	<p>21 A. No.</p> <p>22 Q. Are you aware if IMG has a formal policy about how to handle spam complaints?</p> <p>24 A. No.</p> <p>25 Q. To your knowledge, has IMG ever terminated an</p>
10:16:55 25	<p>MR. FREEMAN: Same objection.</p>	

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10:49:56 5	that affiliates only used CAN-SPAM-compliant versions of images in their email campaigns? A. Yes. MR. APGOOD: Same objection. MR. FREEMAN: Join. A. Yes, there are terms of service. Q. How by the terms of service did IMG ensure compliance? MR. APGOOD: Objection, calls for speculation.	speculation. MR. FREEMAN: Join. A. Yes. Q. Do you recognize the picture in this exhibit? A. No. Q. Do you recognize anything in this exhibit? A. I recognize it as a banner we once used to use. MR. APGOOD: Would you mind reading the last response. (Reporter read back as requested the last answer.)
10:50:12 10	10:50:12 10	10:50:12 10
10:50:24 15	A. In our terms of service section 2, paragraph 3 states that we do not tolerate spam. Q. Any other ways? MR. APGOOD: Object to the form of the question.	10:50:24 15 10:50:24 15
10:50:34 20	MR. FREEMAN: Join. A. I don't know. Q. Are you familiar with the term hyperlink? A. Yes.	10:50:34 20 10:50:34 20
10:50:47 25	Q. What is a hyperlink? A. A link a surfer can click that will redirect them to another page. Q. Have you ever embedded hyperlinks into graphics you design for IMG?	10:50:47 25 10:50:47 25
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10:51:02 5	1. A. Yes. 2. Q. Can you explain? 3. A. How it's done? 4. Q. Or why -- can you explain why you embedded hyperlinks into graphics you designed for IMG? MR. FREEMAN: Objection to the extent it calls for speculation.	10:51:02 5 10:51:02 5
10:51:11 10	MR. APGOOD: Join. A. Usually a graphic will have a click here or motion-to-action button that will signify the user to click here to redirect them to another site.	10:51:11 10 10:51:11 10
10:51:32 15	Q. And so the advertisements you create for affiliates to use, they generally have hyperlinks embedded in the graphics to direct potential users to IMG's website?	10:51:32 15 10:51:32 15
10:51:41 20	MR. FREEMAN: Objection to the extent it calls for speculation.	10:51:41 20 10:51:41 20
10:52:16 25	MR. APGOOD: Object to the form of the question to the extent it misstates the technology involved. A. Yes, in most cases. Q. I'm handing you what's been previously marked Government's Exhibit-21. Is XXXSALSA.com a website owned by IMG? MR. APGOOD: Objection, calls for	10:52:16 25 10:52:16 25
		1. calls for a legal conclusion. 2. MR. APGOOD: Join. 3. A. Yes. 4. Q. Did you design this banner? 5. A. No. 6. Q. Are you aware if someone else from IMG designed this banner? 8. A. I do not know. 9. Q. Are you aware if there's a hyperlink in this banner? 11. A. No. 12. Q. Would it be typical that the hyperlink would be embedded into this banner? 14. MR. FREEMAN: Objection to the form of the question, and to the extent it calls for speculation. 16. MR. APGOOD: Join. 17. A. I do not. 18. Q. Looking at the body of this email, do you see a means whereby a recipient can decline to opt out from receiving further email messages from this sender? 22. A. Yes. 23. Q. Where is that? 24. A. Below the banner it says, "click here to be removed."